

GAHC010142782022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./694/2022

SOHIDUL ALI @ SOHIDUL ISLAM
S/O SAHAN ALI
VILL- GUABARI
P.S. GOSSAIGAON,
DIST. KOKRAJHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PP, ASSAM

2:ABDUL MUTALIB HUSSAIN
S/O LATE ABDUS SUKUR ALI
R/O HOWLY TOWN

P.S. HOWLY
DIST. BARPETA
ASSAM

3:NAZMA KHANAM
W/O ABDUL MUTALIB HUSSAIN
R/O HOWLY TOWN

P.S. HOWLY
DIST. BARPETA
ASSA

Advocate for the Petitioner : MR. M DUTTA

Advocate for the Respondent : MS S H BORA(ADDL.PP, ASSAM)

**BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

JUDGMENT

Date : 14-11-2023

Heard Mr M Dutta, learned counsel for the petitioner and Ms S H Bora, learned Additional Public Prosecutor for the State of Assam. Also heard Mr P Kataki, learned counsel for the respondent Nos. 2 and 3.

2. The petitioner, Sohikul Ali @ Sohikul Islam has filed this application under Section 482 of the Code of Criminal Procedure, 1973 (CrPC for short), read with Sections 397 and 401 CrPC seeking quashing of the order dated 09.06.2022, passed by the learned Chief Judicial Magistrate, Barpeta, in connection with Barpeta PS Case No. 1799 of 2019, granting interim custody of the petitioner's son to respondent No. 3.

3. The FIR unfolds exchange of a baby. The informant Abdul Motalib Hussain's wife is Najma Khanam-Respondent No. 3 herein. On 05.05.2019, as the informant's (Respondent No. 2 for short) child was suffering from breathing problem, the child was admitted at NSCU in the evening and Form IR N 310 inborn was registered against the admission of the child. When the informant wanted to see his child again, he was not allowed to see his child and on the next date, i.e., on 06.05.2019 at about 11:00 a.m., the NSCU authority called him and handed over the dead body of a newborn baby. The informant, however noticed that the dead body was not of his child as his child weighed only 2 kgs at the time of his birth, whereas the dead body which was handed over to him was more than 2 kgs. Under queer circumstances, another woman named Najma Khatun, wife of Sohikul Islam of Gossaigaon was admitted and she too gave birth to a child. The informant's wife also took ill and she was

admitted in the ICU and he was busy attending to his wife and this resulted in a delay in collecting the documents of his child.

4. It is averred by the informant that the cause of death certificate given to the informant by the NSC authority was misfiled due to the treatment of his wife and the informant applied for duplicate cause of death certificate. At that time, the informant noticed that the file number was IRN 413 and he immediately informed the person who issued the certificates that his child's file number was IRN 310 and inborn was written over it. He also informed the person concerned that this certificate was given to Najma Khatun, wife of Sohikul Islam (petitioner) of Guabari and that his child is still alive. The informant strongly suspected that on 06.05.2019 at about 11:00 am, the on duty employee, in exchange of gratification exchanged his child with the child of another woman named Najma Khatun, who is the wife of Sohikul Islam (petitioner), and his living son was handed over to the family of Najma Khatun and Sohikul Islam, while the dead body of their child was handed over to him. An FIR was lodged by the informant – Respondent No. 2 herein, which was registered as Barpeta PS Case No. 1799/19 under Section 120 B/ 363 of the Indian Penal Code (IPC for short). The present petitioner is aggrieved by the order dated 09.06.2022, passed in connection with Barpeta PS Case No. 1799/2019 by the learned CJM. The order is reproduced herein below verbatim:-

“09.06.2022

CR put up.

Seen the prayer of the I.O., praying for handing over the victim child Nur Ali showing that said Nur Ali was recovered on 09.06.2022 and requested to hand over to legal guardian.

Also, seen the Petition No. 4580/2022 filed by Nazma Khanam praying for custody of the child Nur Ali showing that she is the mother of the child and also wife of the complainant namely Abdul Motalib Hussain. The petitioner further submitted that the said recovered child is her son which requires to be given under her custody.

Heard both sides.

Seen the child Nur Ali which recovered by the I.O. on the strength of the order passed by this Court upon the prayer made by the I.O.

After perusing the C.R., it appears that the complainant Abdul Motalib Hussain filed the FIR alleging that his new born baby has been kidnapped from the FAAMCH, Barpeta and the petitioner is the wife of the said complainant being the mother of the child as the child recovered i.e., Nur Ali, prima facie, appears to be child of the petitioner.

Even perusing the DNA sample analysis report, i.e., FSL report dated 08.02.2021, it appears that said petitioner, Nazma Khanam is the mother of the child Nur Ali against whom DNA profiling was conducted and on the basis child Nur Ali was recovered by I.O. The petitioner being the mother and natural guardian of the recovered child Nur Ali, I am of the view that for the better and safe interest of the said child Nur Ali, petitioner is to be given interim custody of the recovered child Nur Ali which is produced before me today on furnishing bond of Rs. 1,000/- by the petitioner before the I.O.

Accordingly, the I.O. shall hand over the custody of the said child, i.e., Nur Ali to the petitioner after identifying on furnishing above bond before him and the I.O. shall submit compliance report before this court.

With above observation, the present prayer of the petitioner in the Petition no. 4580 is disposed of."

5. The order of this Court dated 01.06.2023 reflects that a status report has been obtained by the learned Additional Public Prosecutor, relating to the pendency of the proceedings.

Charge Sheet being CS No. 1272 dated 31.12.2022 has been laid and cognizance was taken against the accused persons under Section 120 B/363 IPC in connection with PRC No. 1242/2023 arising out of Barpeta P.S. Case No. 1799/2019. The petitioner and his wife are arrayed as accused in the aforementioned criminal case.

6. It is averred on behalf of the petitioner that the learned CJM has no jurisdiction to pass any order relating to custody of a child.

7. It is submitted by the petitioner that on 04.05.2019, his wife, Nazma Khatun gave birth to a boy (name withheld) in RNB Civil Hospital, Gossaigaon, but owing to some ailment, the doctor of RNB Civil Hospital, after an hour of the birth of the child, referred the child to Kokrajhar Civil Hospital and the doctor of Kokrajhar Civil Hospital on 05.05.2019, referred the child to FAAMCH, Barpeta, for better treatment. The child underwent treatment at FAAMCH, Barpeta from 05.05.2019 to 23.05.2019 and after recovery, the petitioner brought back his wife and child to their residence. The child is at present three years two and a half months old. Meanwhile, the respondent No. 2, Abdul Mutalib Hussain, lodged an FIR and investigation commenced.

8. It is submitted on behalf of the petitioner that during investigation the Investigating Officer (IO in short) prayed for DNA profiling of the petitioner's son to unearth, who are the biological parents of the child. Vide order dated 08.10.2020, in connection with the aforementioned case, the Court allowed the prayer for DNA sampling and profiling. On 07.6.2022, the IO submitted an application for producing the baby in the court and handing over the baby to the biological parents on the basis of the DNA report and on 09.06.2022, the impugned order was passed.

9. It is contended that a criminal Court does not have the jurisdiction to decide the guardianship of any child, leave alone to hand over custody of the child. The petitioner has emphasised through his argument that he and his wife are the biological parents of the child whom they have nurtured and brought up. They are highly aggrieved as their child was wrenched out of their custody and this also had an impact on the psyche of the child. It is averred that the learnt Court failed to appreciate that the DNA of the respondent No. 2 does not match with the baby boy which creates a reasonable doubt over the paternity of the baby boy. The Court acted on the result of the matching DNA, without hearing the authority giving the report, and this is not admissible in law. This case was at the investigation stage when the child was handed over to the respondent No. 2 and no case was made out against the petitioner.

10. Per contra the respondent Nos. 2 and 3, i.e., the informant and his wife have filed an affidavit-in-opposition, stating that the respondent No. 3 was admitted on 03.05.2019 at FAAMCH, Barpeta and she gave birth to a boy through Caesarean operation on 05.05.2019 at about 01:50 p.m. The child was normal, but in the evening the child was suffering from breathlessness and the doctor on duty advised the respondent No. 2 to admit the baby in the Special Newborn Care Unit (SNCU) as the paediatrician was not available at that time. On the same day, the petitioner's baby was born at RNB Civil Hospital, Gossaigaon and was admitted at FAAMCH, Barpeta in a critical condition. After admission of his baby in the SNCU, the respondent No. 2/informant, respondent No. 3 and their relatives sought permission to see the baby, but the doctor did not allow them to see the baby. Surprisingly, on 06.05.2019 at about 11:00 pm, the SNCU authority called the respondents over phone and informed them that their newborn baby had expired. It is alleged that in exchange of gratification the

respondents' newborn baby was handed over to the petitioner and the hospital authorities handed them the dead body of a baby. The respondents made an RTI application and in reply to their application, it was stated that as per Sl. No. 7, IRN No. 413, the date of admission was mentioned as 07.01 pm, whereas the petitioner's wife was shown at Sl. No. 6 and IRN No. 310. It is stated on behalf of the respondents that IRN No. 310 belongs to the respondents' child and there is every possibility of an exchange of babies as the name of the petitioner's wife is similar to the name of the respondent No. 3, i.e. Nazma Khanam. During investigation, the blood samples of the respondents and their child were collected on 03.10.2020 and forwarded to Kahilipara for forensic examination and on 30.03.2021, the IO received the forensic report that as per the DNA profiling-

- i) the DNA profile of the child is marked as DNA 3054/20 and 3057/20,
- ii) which matches with the DNA of respondent No. 3, i.e., DNA No. 3053/20 and DNA No. 3056/20.
- iii) however, the DNA profile of the child did not match with the profile of the deponent (Respondent No.2 – Informant),
- iv) i.e., DNA No. 3055/20 and DNA No. 3058/20.

Thereafter, the IO made a prayer before the learned Chief Judicial Magistrate and the order dated 09.06.2022 was passed.

11. I have considered the submissions at the Bar with circumspection.

12. The learned counsel has submitted on behalf of the respondent that in a case registered under Section 120 B/363 IPC, the Criminal Court does not have any jurisdiction to pass an order for interim custody, more so, when the DNA profile of the child does not match

with the DNA profile of the respondent No. 2, who is now in custody of the child.

13. The learned counsel for the petitioner has relied on the decision of the Hon'ble the Supreme Court in ***Inayath Ali & Another –vs- State of Telangana & Anr.***, in connection with Criminal Appeal No. 1569/2022, decided on 15.09.2022, wherein it has been observed that-

“7. The first factor, which, in our opinion, is of significance, is that in the judgment under appeal, blood sampling of the children was directed, who were not parties to the proceeding nor were their status required to be examined in the complaint of the respondent no.2. This raised doubt on their legitimacy of being borne to legally wedded parents and such directions, if carried out, have the potential of exposing them to inheritance related complication. Section 112 of the Evidence Act, also gives a protective cover from allegations of this nature. The said provision stipulates:-

“Birth during marriage, conclusive proof of legitimacy.—The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.”

8. In our opinion, the Trial Court as also the Revisional Court had completely ignored the said factor and proceeded as if the children were material objects who could be sent for forensic analysis. The other factor, in our opinion, which was ignored by the said two Courts is that the paternity of the children was not in question in the subject-proceeding.

9. The substance of the complaint was not related to paternity of the children of the respondent no.2 but the question was whether the offences under the aforesaid provisions of the 1860 Code was committed against her or not. The paternity of the two daughters of the respondent no.2 is a collateral factor to the allegations on which the criminal case is otherwise founded. On the basis of the available materials, in our

opinion, the case out of which this proceeding arises could be decided without considering the DNA test report. This was the reasoning which was considered by the Coordinate Bench in the case of Ashok Kumar (supra), though that was a civil suit. Merely because something is permissible under the law cannot be directed as a matter of course to be performed particularly when a direction to that effect would be invasive to the physical autonomy of a person. The consequence thereof would not be confined to the question as to whether such an order would result in testimonial compulsion, but encompasses right to privacy as well. Such direction would violate the privacy right of the persons subjected to such tests and could be prejudicial to the future of the two children who were also sought to be brought within the ambit of the Trial Court's direction.

10. We, accordingly, allow the appeal and set aside the judgment of the High Court. Consequentially, the order of the Trial Court passed on 17th October, 2014 in Crl.M.P. No. 92 of 2014 arising out of S.C.No. 70/2012 shall also stand set aside."

14. The learned counsel for the respondents laid stress in his argument that the case of ***Inayath Ali (supra)*** relating to dispute of 'cruelty u/s 498A IPC' is not similar to the instant case. The appellant highlighted and projected that this judgment discourages DNA test which breaches into the privacy of the child and casts aspersions on his legitimacy.

15. The Learned counsel for the petitioner has also relied on the decision of the High Court of Judicature at Bombay in connection with Criminal Appeal No. 306 of 2016, decided on 15.03.2023 in the case of ***Suresh –vs- the State of Maharashtra;*** reported in **2023 0 Supreme (Bom) 431**, wherein it was observed that-

8. Further, reliance can be placed on the decision of the Hon'ble Supreme Court in Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra, [(2005) 5 SCC 294], wherein it has been held that :-

" DNA evidence may have a great significance where there is supporting evidence, dependent, of course, on the strength of that evidence. in every

case one has to put the DNA evidence in the context of the rest of the evidence and decide whether taken as a whole it does amount to a prima facie case.

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10. We have considered the ocular evidence as well as the scientific evidence. As regards the ocular evidence is concerned, at the cost of repetition, we would like to say that P.W.4 and P.W.5 are not trustworthy as they have changed their statements in the cross. When the ocular evidence was not supporting, conviction ought not to have been based only on the DNA test report i.e. medical report. Therefore, the finding and conclusion in the judgment by the learned Trial Court is perverse and not based on the legal principles. Therefore, it deserves to be set aside.”

16. Relying on the decision of Suresh vs. State of Maharashtra (supra) the learned counsel for the petitioner has submitted that solely based on positive test report, it cannot be established that the respondents are the parents of the child. Supporting evidence is required. The petitioner has submitted that the erroneous order passed by the learned CJM, Barpeta, in Barpeta PS Case No. 1799/2019 be set aside.

17. Per contra, the learned counsel for the respondents laid stress in his argument that an interim order was passed only for a short period and such an Order can be passed in case of a minor child. The learned counsel for respondents Nos. 2 and 3 has relied on the decision of the Hon’ble Supreme Court in ***Dipanwita Roy –Vs- Ronobroto Roy;*** reported in **(2015) 1 SCC 365**, wherein it has been observed that-

“17. The question that has to be answered in this case, is in respect of the alleged infidelity of the appellant-wife. The respondent-husband has made clear and categorical assertions in the petition filed by him under [Section 13](#) of the Hindu Marriage Act, alleging infidelity. He has gone to the extent of naming the person, who was the father of the male child born to the appellant-wife. It is in the process of substantiating his allegation of infidelity, that the respondent-husband had made an

application before the Family Court for conducting a DNA test, which would establish whether or not, he had fathered the male child born to the appellant-wife. The respondent feels that it is only possible for him to substantiate the allegations levelled by him (of the appellant-wife's infidelity) through a DNA test. We agree with him. In our view, but for the DNA test, it would be impossible for the respondent-husband to establish and confirm the assertions made in the pleadings. We are therefore satisfied, that the direction issued by the High Court, as has been extracted hereinabove, was fully justified. DNA testing is the most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. This should simultaneously be taken as the most authentic, rightful and correct means also with the wife, for her to rebut the assertions made by the respondent-husband, and to establish that she had not been unfaithful, adulterous or disloyal. If the appellant-wife is right, she shall be proved to be so.

12. We would, however, while upholding the order passed by the High Court, consider it just and appropriate to record a caveat, giving the appellant-wife liberty to comply with or disregard the order passed by the High Court, requiring the holding of the DNA test. In case, she accepts the direction issued by the High Court, the DNA test will determine conclusively the veracity of accusation levelled by the respondent-husband, against her. In case, she declines to comply with the direction issued by the High Court, the allegation would be determined by the concerned Court, by drawing a presumption of the nature contemplated in [Section 114](#) of the Indian Evidence Act, especially, in terms of illustration (h) thereof. [Section 114](#) as also illustration (h), referred to above, are being extracted hereunder:

“114. Court may presume existence of certain facts – The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustration (h) - That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given, would be unfavourable to him.”

This course has been adopted to preserve the right of individual privacy to the extent possible. Of course, without sacrificing the cause of justice. By adopting the above course, the issue of infidelity alone would be determined, without expressly disturbing the presumption contemplated under [Section 112](#) of the Indian Evidence Act. Even though, as already stated above, undoubtedly the issue of legitimacy would also be incidentally involved."

18. On the contrary, learned counsel for the petitioner laid stress in his argument that the case of **Dipanwita Roy (supra)** was pending in the Family Court and was related to a divorce petition under section 13 (1) (i) of the Hindu Marriage Act, 1955, on the ground of adulterous behaviour of wife.

19. The learned counsel for the respondents has also relied on the decision of the Hon'ble Supreme Court in **Ashok Kumar -vs Raj Gupta & Others;** reported in **(2022) 1 SCC 20**, wherein it has been observed that-

"15. DNA is unique to an individual (barring twins) and can be used to identify a person's identity, trace familial linkages or even reveal sensitive health information. Whether a person can be compelled to provide a sample for DNA in such matters can also be answered considering the test of proportionality laid down in the unanimous decision of this Court in K.S Puttaswamy v. Union of India, wherein the right to privacy has been declared a constitutionally protected right in India. The Court should therefore examine the proportionality of the legitimate aims being pursued, i.e whether the same are not arbitrary or discriminatory, whether they may have an adverse impact on the person and that they justify the encroachment upon the privacy and personal autonomy of the person, being subjected to the DNA Test.

16. It cannot be overlooked that in the present case, the application to subject the Plaintiff to a DNA Test is in a declaratory suit and the plaintiff has already adduced evidence and is not interested to produce additional evidence (DNA), to prove

his case. It is now the turn of the defendants to adduce their evidence. At this stage, they are asking for subjecting the plaintiff to a DNA test. Questioning the timing of the application the trial Court dismissed the defendants application and we feel that it was the correct order.

17. In the yet to be decided suit, the plaintiff has led evidence through sworn affidavits of the Respondents, his School Leaving Certificates and his Domicile Certificate. Significantly, the respondent No.1, who is one of the 3 siblings (defendants) had declared in her affidavit that the Plaintiff was raised as a son by her parents. Therefore, the nature of further evidence to be adduced by the plaintiff (by providing DNA sample), need not be ordered by the Court at the instance of the other side. In such kind of litigation where the interest will have to be balanced and the test of eminent need is not satisfied our considered opinion is that the protection of the right to privacy of the Plaintiff should get precedence."

20. I have considered the submissions at the bar with circumspection.

21. In the case of **Ashok Kumar (supra)**, it was held by the Hon'ble Supreme Court that the order of the trial court dismissing the defendant's application for subjecting the plaintiff to DNA test which was rejected was held to be correct. It was observed that the case between the parties was of a civil nature and it was observed that DNA test is not to be directed as a matter of routine but only in deserving cases. It was also observed in **Dipanwita Roy's Case (supra)** that DNA test is the most legitimate and scientifically perfect means, which the husband could use, to establish his assertion on infidelity. But at the same time, the Hon'ble Supreme Court recorded a caveat, giving the appellant wife liberty to comply with or disregard the order passed by the High Court, requiring holding of the DNA test in consequence to which the case may be decided as per Section 114 of the Evidence Act.

22. In the case at hand, an interim order was passed by the learned CJM for custody of the baby by the respondents. This case is registered under Section 120-B/363 IPC and the order dated 09.06.2022 is indeed not sustainable, but it has to be borne in mind that the order is an interim order. It is true that at this juncture, when the question of custody is in dispute, the setting aside of the interim order will lead to a chaotic situation. This petition has been filed challenging the legality and the validity of the order dated 09.06.2022, in connection with Barpeta PS Case No. 1799 of 2019, registered under Sections 120-B/363 IPC, against the petitioner and his wife and this is not a case for custody of the child. But considering the positive DNA report of the respondent No. 3 and the baby, the court was impelled to pass an interim order.

23. The order dated 09.06.2022, reveals that the mother was given interim custody of the child whose DNA was similar the child's DNA. The order was on the prayer of the IO for handing over the child and also on the prayer of the mother vide petition No. 4580/2022, dated 09.06.2022 for custody of her child, who is allegedly wrongfully confined by the present petitioner and his family. The child was recovered on the strength of the order passed by the learned Chief Judicial Magistrate.

24. As per Section 97 of the Cr.PC an Executive Magistrate or a Magistrate of First Class can pass an order in cases when a person is alleged to be wrongfully confined. In this case, under the peculiar facts and circumstances, the IO made an application before the CJM who passed the impugned order dated 09.06.2022.

25. Section 97 of the Cr.PC reads as follows:

“97. Search for persons wrongfully confined.- If any District Magistrate, Sub-divisional Magistrate or Magistrate of the first class has reason to believe that any person is confined under such

circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.”

26. Reverting back to the instant case, it is held that a case of offence committed u/s 120B/363 IPC has been registered against the present petitioner. During investigation there was a match in the DNA of the respondent No. 3 and the DNA of the child alleged to have been kidnapped and wrongfully confined by the present petitioner. An order was required to be passed when there was a match in the DNA. DNA is not conclusive proof of the parenthood of a child.

27. It has been observed by Hon'ble the Supreme Court in the case of ***Ranjitsing Brahmajeetsing Sharma Vs. State of Maharashtra***, reported in ***(2005) 5 SCC 294*** that:-

“DNA evidence may have a great significance where there is supporting evidence, dependent of course on the strength of that evidence.”

28. The instant case is at its initial stage of the proceeding. Charge-sheet has been filed and evidence is yet to be recorded. The child has been given in interim custody to respondent No. 3 vide order dated 09.06.2022. At present the child is with his projected mother whose DNA is similar to the child's DNA. At this juncture, it would not be justified to set aside and quash the impugned order dated 09.06.2022. As soon as the order would be set aside and quashed, there will be a chaotic situation relating to the custody of the child. The custody of their child has not been finally decided by the Magistrate and rightly so, as this is a case u/s

120B/363 IPC. The petitioner or the respondent No. 2 has to approach the proper forum for custody of their child. The child is at an impressionable age and vacating or setting aside the impugned order may lead to wrenching out the child from the custody of his present guardian which may affect the psyche of the child.

29. It cannot be held at this juncture that the order dated 09.06.2022 was passed without jurisdiction and without following the proper procedure. The welfare of the child is of paramount importance. The necessity of interim custody has not ceased at this juncture. The custody of minor children is a sensitive issue. It is also a matter involving sentimental attachment. Such a matter is to be approached and tackled carefully. A balance has to be struck between attachment and sentiments of the parties towards the minor. The welfare of the minor is of paramount importance.

30. Although the learned counsel for the petitioner laid stress in his argument that the custody of a child is a matter to be decided by a family Court and the learned CJM has transgressed his jurisdiction in passing the interim order, yet at this juncture I am not inclined to set aside the impugned order granting interim custody to the projected biological mother of the child. It can be deduced that if the impugned order is vacated or set aside or quashed, instantly the question of custody of the child will have to be dealt with. The child cannot be treated as a commodity. Earlier the child was with the petitioner and his wife and after the order dated 09.06.2022 was passed, the child's custody was given to the respondent Nos. 2 and 3. It appears that setting aside the order will adversely affect the psyche of the minor child. It cannot be ignored that without proper evidence, and only on the basis of the DNA report, a decision cannot be taken relating to the custody of the child. At this juncture, I am hesitant to set aside the order impugned.

31. In the wake of my foregoing discussions, I am not inclined to set aside and quash the impugned order dated 09.06.2022 passed by the learned CJM in Barpeta P.S. Case No. 1799/2019 registered u/s 120B/363 IPC.

32. Petition is devoid of merits and is hereby dismissed with a liberty to the parties to approach the proper forum for custody of the child.

33. No order as to costs.

JUDGE

Comparing Assistant